UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,509	03/29/2004	David Clarence Mullen	4366-161	7396

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EXAMINER
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ART UNIT	PAPER NUMBER
2614	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Advisory Action	10/813,509	MULLEN, DAVID CLARENCE
Before the Filing of an Appeal Brief	Examiner	Art Unit
	KHAI N. NGUYEN	2614

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>20 March 2008</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

      NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: _____.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/Ahmad F. MATAR/
Supervisory Patent Examiner, Art Unit 2614

Continuation of 11.

Applicant's request for reconsideration filed on March 20, 2008 has been fully considered but it is not persuasive.

Regarding claims 1, 13 and 14, Applicant argues that these claims "directed to a process, and that process comprises statutory subject matter", and these claims have "a useful, concrete and tangible result" (See page 2 lines 6-10 of Applicant's Remarks/Arguments section).
  The Examiner respectfully disagrees with Applicant's argument because claims 1, 13 and 14 recite nothing more than a manipulation of data or merely recite a disembodied database, in a form of an algorithm steps and they do not include any tangible computer or network references. The algorithm of claims 1, 13 and 14 appears to be an abstract idea, given that it does not produce any kind of a useful, concrete, and tangible result. The recited process must somehow apply, involve, use, or advance the technological arts.
The recited method of claims 1, 13 and 14 does not apply, involve, or use the technological arts since all of the recited steps can be performed in the mind of a user/person or by the use of a pencil and paper. The claimed invention, as a whole, is not within the technological arts as explained above claims 1, 13 and 4 are deemed to be directed to non-statutory subject matter.
  Even if one accepts applicant's above arguments, Claims 1-23 will still be rejected under 35 U.S.C. 101 because the claimed invention is still directed to non-statutory subject matter. Claims 1-23 according to the instant application's specification is "implemented in software" (See instant application specification - Fig. 1, 122 Customer Forecast Contact, 124 Agent Arrival Prediction, page 7 lines 16-27, and page 8 lines 6-7). Therefore, claims 1-23 are interpreted as software claims which are non-statutory. And, therefore, claims 1-23 rejection is proper and maintainable.

  Regarding the Art Rejection for claims 1-6 and 9-23, Applicant argues that "the prior art references do not teach, suggest or describe segmenting a task into multiple segments and separately determining the probability that each segment will be completed within a forecast horizon, - - - " (See page 3 lines 7-11 of Applicant's Remarks/Arguments section).
  In response to the Applicant's argument, the Examiner respectfully disagrees because Cave (U.S. 5,327,490) clearly discloses segmenting a task into multiple segments such as a first segment related to time during which the agent is speaking with the customer "talk time" and a second segment during which the agent is performing paper work following an instance of talk time to complete a call "wrap-up time" (See Cave column 11 lines 30-37). Cave also discloses the calculation of the probability for each segment (See Cave column 2 lines 27-42), but Cave does not disclose the probability calculation for each segment in detail. However, Mullen (U.S. PUB. 2003/0018762 A1) teaches the detailed steps to calculate the probability (See Mullen - Fig. 2 step 200 to step 220, and paragraphs [0019]-[0059]).
It would have been obvious to a person of ordinary in the art at the time the invention was made to apply a known technique to a known device (i.e., using probability calculation for each segment of a task) ready for improvement to yield predictable results (see KSR – MPEP 2143). It would have been obvious to a person of ordinary in the art to incorporate the use of probability calculation, as taught by Mullen, into the method of Cave in order to enhance the forecast for the availability of an agent. And, therefore the art rejection of claims 1-6 and 9-23 is proper and maintainable.

  Regarding the Art Rejection for claims 7 and 8, Applicant repeats the same argument that the third reference Cave'419 (U.S. 5,570,419 hereinafter "Cave'419) does not teach, suggest to "separating a single task into segments, and then separately calculating a probability - - -" (See page 4 lines 9-11 of Applicant's Remarks/Arguments section).
  The Examiner respectfully disagrees with Applicant's argument because as discussed above regarding claims 1-6 and 9-23, the combination of Cave and Mullen already discloses the task segmentation and probability calculation for each segment. Cave'419 teaches a method of using weighted forecasts, and the variances computation (See Cave'419 column 5 lines 55-67, and column 6 lines 1-50). It would have been obvious to a person of ordinary in the art at the time of the invention was made to apply a known technique to a known device (i.e., using weighted forecasts and the variances computation add to the probability calculation for each segment of a task) ready for improvement to yield predictable results (see KSR – MPEP 2143). Therefore, it would have been obvious to a person of ordinary in the art to incorporate the use of weighted forecasts and variances computation, as taught by Cave'419, into the combination method of Cave and Mullen in order to enhance the forecast for the availability of an agent. And, therefore the art rejection of claims 7 and 8 is proper and maintainable.

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